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Executive Office for United States Attorneys

United States Attorneys' Bulletin

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

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Please send change of address to Editor, United States Attorneys' Bulletin, Room 1136, Universal Building North, 1875 Connecticut Avenue, N.W., Washington, D. C. 20009.

COMMENDATIONS

The following **Assistant United States Attorneys** have been commended:

Daniel E. Bensing, (District of Columbia), by Col. Merton F. Filkins, Staff Judge Advocate, Department of the Air Force, Patrick Air Force Base, Florida, for obtaining a favorable ruling in a district court case on behalf of the Eastern Space and Missile Center.

Gene Bracamonte, (District of Arizona), by Richard B. Smith, Superintendent, Carlsbad Caverns National Park, Carlsbad, New Mexico, for obtaining dismissal of a complaint based on the discretionary function exception to the Federal Tort Claims Act.

Kathleen M. Brinkman, (Ohio, Southern District), by William Sessions, Director, Federal Bureau of Investigation, Washington, D. C., who presented her with a Certificate of Appreciation for her prosecutive accomplishments.

Ann Frances Carpini, (Florida, Middle District), by William Sessions, Director, Federal Bureau of Investigation, Washington, D. C., for her assistance in an investigation to recover stolen property from the First Seneca Bank, Greensburg, Pennsylvania.

Michael "Mac" Cauley, (Florida, Middle District), by James B. Bishop, Senior U.S. Probation Officer, U.S. District Court, Tampa, Florida, for his excellent representation in a revocation hearing.

Michael Chun, (District of Hawaii), by Richard E. Hallgren, Assistant Administrator for Weather Services, National Oceanic and Atmospheric Administration, Silver Spring, Maryland, for a favorable verdict in a civil case.

George D. Dysart, (District of Oregon), by Stan Jones, Sr., Chairman, Board of Directors, The Tulalip Tribes, Marysville, Washington, for his assistance in settling an inter-tribal dispute before the Ninth Circuit Court of Appeals concerning usual and accustomed fishing places.

Sheree L. Gowey, (Wisconsin, Western District), by Donald L. Ivers, General Counsel, Veterans Administration, Washington, D.C., for her excellent representation in the defense of several VA officials in a civil lawsuit.

John R. Halliburton, (Louisiana, Western District), by Patrick C. Murphy, Office of General Counsel, Department of Agriculture, Little Rock, Arkansas, and Robert Fenton, Chief, Litigation Branch, Federal Crop Insurance Corporation, Kansas City, Missouri, for his outstanding contribution as legal counsel in an action before the Fifth Circuit Court of Appeals.

Clifford D. Johnson, (Indiana, Northern District), by Charles Sekerak, Assistant Inspector General for Investigations, Railroad Retirement Board, Chicago, Illinois, for his professionalism in handling recent prosecutive matters.

Jeffrey J. Kent, (District of Oregon), by James F. Torrence, U.S. Forest Service, Department of Agriculture, Portland, Oregon, for providing valuable insight into the issues involved in large-scale timber theft cases.

Fred Kramer, (Georgia, Southern District), by Leo F. Shatzel, Postal Inspector in Charge, U.S. Postal Service, Atlanta, Georgia, for his handling of two recent Postal Inspection Service cases.

Lawrence B. Lee, (Georgia, Southern District), by Robert Brigham, M.D., Dwight David Eisenhower Army Medical Center, Department of the Army, Fort Gordon, Georgia, for the successful outcome of a trial involving the defense of the Army Medical Center.

R. Michael Murphy, (Kentucky, Eastern District), by Joel A. Carlson, Special Agent in Charge, Federal Bureau of Investigation, Louisville, Kentucky, for his outstanding performance in an important civil rights case.

A. Duane Schwartz, (Kentucky, Western District), by Joel A. Carlson, Special Agent in Charge, Federal Bureau of Investigation, Louisville, Kentucky, for his prosecutorial expertise in a complex narcotics conspiracy case.

John Patrick Smith, (Texas, Southern District), by Andrew Duffin, Special Agent in Charge, Federal Bureau of Investigation, Houston, Texas, for his outstanding performance in a criminal case involving interstate transportation of stolen property and mail fraud.

D. Paul Vernier, Jr. and **Frederick A. Black**, (District of Guam), by James Richards, Inspector General, Department of the Interior, Washington, D.C., who were presented with Certificates of Appreciation for their high quality of service to the Office of the Inspector General.

Dale E. Williams, Jr., (Ohio, Southern District), by Rick Alan Richards, Deputy Director, Department of Investigations, State of Illinois, Springfield, Illinois, for the successful prosecution of a criminal case.

PERSONNEL

Effective March 9, 1988, Attorney General Edwin Meese III appointed **Francis A. Keating, II** to be Acting Associate Attorney General. His nomination by the President is presently pending in the Senate.

Joe D. Whitley, formerly Deputy Assistant Attorney General, Criminal Division, has been appointed Principal Deputy Associate Attorney General.

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POINTS TO REMEMBER

CLARIFICATION OF DEPARTMENT OF JUSTICE PLEA BARGAINING POLICY REGARDING COOPERATION

The Department's plea bargaining policies, as outlined in a memorandum dated November 3, 1987, by Associate Attorney General Stephen S. Trott, are intended to impose some restrictions on the plea bargaining authority of federal prosecutors in certain cases consistent with the central purpose of the Sentencing Reform Act -- namely, the reduction of sentencing disparity. A copy of the memorandum is attached at the Appendix of this Bulletin.

While the Department's policy is intended to prevent unrestrained plea bargaining from subverting the reforms contemplated by the Guidelines, nothing in that policy or in the Sentencing Reform Act was intended to restrict the prosecutor's authority to plea bargain in cases involving cooperation. The Sentencing Reform Act, as well as the Guidelines and Commentary, contemplate that defendants who render substantial assistance to the government may be rewarded appropriately either through charging and/or sentencing consideration. Thus, the Department's policy on plea bargaining does not restrict the prosecutor's discretion in pursuing or not pursuing any charge or recommending or not recommending any sentence in cases where the prosecutor is prepared to certify to the Court that the defendant has rendered substantial assistance to the government. See page 3 of the attached memorandum, which refers to Chapter 5, Part K of the Guidelines.

(Criminal Division)

* * * * *

AUTHORITY TO SECURE A COURT ORDER TO INTERCEPT COMMUNICATIONS FROM PAGING DEVICES UNDER THE ELECTRONIC COMMUNICATIONS PRIVACY ACT OF 1986

There has been some confusion among federal prosecutors as to what type of authority is necessary to apply for a court order to intercept communications from paging devices. Questions have arisen as to whether the interception can be accomplished pursuant to a probable cause search warrant based on Rule 41 of the Federal Rules of Criminal Procedure, issued by a U.S. Magistrate. Such an order would be invalid.

There are three types of paging devices.

1. Tone only pager: This type device is specifically excluded from coverage under the new Act and does not require a court order. See 18 U.S.C. § 2510(12)(c).

2. Tone and voice pager: This type device is considered a wire communication under the new Act and requires a full eavesdropping warrant conforming to 18 U.S.C. § 2518, authorized by the Attorney General or an authorized designee and issued by a judge of competent jurisdiction (District Court or Court of Appeals Judge). See 18 U.S.C. § 2510(1).

3. Digital display paging device (Clone Pager): This type device is an electronic communication under the Act and requires a full eavesdropping warrant conforming to 18 U.S.C. § 2518, authorized by the Attorney General or an authorized designee,*/ and issued by a judge of competent jurisdiction (District Court or Court of Appeals Judge). See 18 U.S.C. § 2510(12).

Any questions should be directed to Thomas J. O'Malley, Special Counsel to the Director, Office of Enforcement Operations, Criminal Division, FTS 633-2869.

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*/ The Washington approval requirement is not statutory. It was agreed to by the Department with Congress to insure proper implementation of the Act that, for a three-year period, subsequent to passage of the Act, field attorneys would have to get approval from Washington to make applications to the court to get such an order. Until January 20, 1990, it will be necessary to obtain approval from Washington. After that date, this requirement will no longer be in effect.

(Criminal Division)

* * * * *

ASSET FORFEITURE

United States Attorney Robert L. Barr, Jr., Northern District of Georgia, has prepared an Asset Forfeiture Flow Chart which will help to interpret and understand the regulations concerning procedures for seizing, forfeiting and distributing assets in criminal cases where forfeiture statutes are applicable. This flow chart, entitled "Attorney General's Guidelines on Seized and Forfeited Property" will also help to track seized assets subject to forfeiture within your office. It is attached at the Appendix of this Bulletin. Any questions or comments should be directed to Mr. Barr at FTS 242-6954.

(Northern District of Georgia)

* * * * *

LEGISLATION

Fair Housing (H.R. 1158; S. 558)

On April 27, 1988, by a margin of 26 to 9, the House Judiciary Committee voted to report the Fair Housing bill. Approval came after 3 days of markup, with the final session characterized principally by Democratic defeat of a series of Republican amendments. Congressman Edwards won unanimous approval of an amendment to substitute handicap access design features developed by the American Institute of Architects in lieu of the less precise "Universal Features of Adaptive Design" standards originally employed. A Gekas amendment removing mortgage loan insurers from the bill was adopted. Also adopted was a Glickman amendment removing title insurers from the ambit of the bill. (Casualty insurers were also removed.)

Representative Glickman offered an amendment to the Administrative Law Judge (ALJ) section of the bill to provide for Attorney General review of ALJ decisions. This proposal was, however, amended by Congressman Conyers before adoption to substitute the Secretary of Housing and Urban Development as the reviewing authority. The Conyers change motivated Congressman Glickman to later withdraw his now modified amendment to allow him to rethink the entire ALJ concept (including the Kastenmeier amendment creating ALJs under the auspices of the Department of Justice.)

Despite Congressman Edwards' pledge to seek an open rule (reinforced by Congressman Rodino's public commitment to petition the Rules Committee for same), experience still suggests the probability of restrictions on amendments on the floor. One significant complication for the Democratic leadership will be concern for unresolved tensions among rank-and-file Democrats over ALJ provisions which even opponents of the Administration position admit need to be addressed on the floor. Prospects for sequential referral to the Banking Committee are uncertain. Proponents of the bill are attempting to bring it to the House floor by late May or early June.

In the Senate, S. 558 was reported by the Subcommittee on Constitution and is pending on the full Judiciary Committee agenda. Consideration is unlikely until completion of House action.

* * * * *

Federal Employees Liability Reform (H.R. 4358)

On April 28, 1988, the House Judiciary Subcommittee on Administrative Law and Governmental Relations marked up H.R. 4358, the Federal Employees Liability Reform and Tort Compensation Act of 1988. This bill, which was drafted by the Department of Justice and introduced by Subcommittee Chairman Barney Frank, provides that suit against the United States under the Federal Tort Claims Act shall be the exclusive remedy for ordinary common law torts committed by federal government employees acting within the scope of their employment. The bill effectively overrules the recent Supreme Court decision in Westfall v. Erwin, which left employees vulnerable to personal liability for such torts, unless the acts in question were discretionary in nature. The Subcommittee adopted several amendments to clarify provisions that the Department regarded as unnecessary but harmless. Other amendments are under consideration for full Committee action and the Department will continue to work closely with Subcommittee staff and union representatives to assure the integrity and effectiveness of the final bill.

The bill has not yet been introduced in the Senate although the Department is working closely with staff, particularly on the Senate Judiciary Subcommittee on Courts and Administrative Practice. It is likely that the bill will be introduced in the near future, and that it will be essentially identical to the version that will be reported by the House Subcommittee on Administrative Law and Governmental Relations. A relatively fast track in both the House and Senate is anticipated, and it is hoped that the bill will be enacted this year.

* * * * *

Firearms Legislation

On April 28, 1988, a joint Department of Justice-law enforcement legislative package was submitted to Congress to resolve the so-called "plastic gun" problem and to strengthen federal firearms laws in a number of other areas. Given the past criticism we were receiving from state and local law enforcement groups, this compromise bill is a major accomplishment for the Attorney General. All national law enforcement organizations joined with the Attorney General in endorsing this compromise. Moreover, the National Rifle Association has given the bill a qualified endorsement.

The bill was promptly introduced in the Senate by Senator McClure. Moreover, Senators Metzenbaum and Thurmond, the other two Senate leaders on this issue, have indicated support for the bill and plan early markup. In the House, Chairman Bill Hughes seems intent on moving ahead with the "plastic gun" bill that he and Congressman Bill McCollum have introduced and have reported out of the Subcommittee on Crime. The state and local law enforcement groups are lobbying Chairman Hughes to substitute the "Meese" compromise bill for his bill.

* * * * *

Integrity in Post-Employment Act, (S. 237; H.R. 1231)

On April 19, 1988, the Senate passed S. 237, which adds significant new restrictions to existing post-employment laws, extends many of those restrictions to Members of Congress and their staffs, and extends by statute to the House of Representatives several Senate ethics rules.

The comparable House Bill, H.R. 1231, is much more limited, covering only foreign lobbying, and has not yet been reported out of subcommittee. A hearing on ethics in government is scheduled to be conducted by Congressman Barney Frank this month before the House Judiciary Subcommittee on Administrative Law. A Department of Justice representative will testify, although the outlook is dim for passage of a bill in the House.

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Juvenile Justice (H.R. 1801)

On April 28, 1988, the House Education and Labor Committee reported favorably H.R. 1801, a bill which reauthorizes the Juvenile Justice and Delinquency Prevention Act of 1974 through Fiscal Year 1992. This bill, if enacted, would reauthorize the grant program administered by the Department which deals with encouraging states and localities to separate juvenile offenders from adult criminals and to establish programs to locate missing children.

The Department opposes H.R. 1801 because it redirects the programmatic focus of the Juvenile Justice Program and adds new functions which cannot be accomplished by existing staff and resources. Additionally, this bill redirects 10 percent of the discretionary funds under the control of the Department to the states, thus jeopardizing many JJDP national programs which are currently on-going and need continuation funding. Because of the unanimous support for continuing the Juvenile Justice and Delinquency Prevention Act on the House side, early passage is anticipated.

At this time there is no companion bill on the Senate side. However, Senator Biden's omnibus criminal justice state and local assistance bill, S. 1250, does contain Juvenile Justice authorizing language. At this point, there are no signs of movement on this bill.

* * * * *

Omnibus Trade Bill (H.R. 3)

On April 27, 1988, the Senate passed the trade package by a vote of 63-36. The vote indicates a failure by the Democrats to gather the support needed to override a veto by the President. The Department of Justice continues to believe that certain of the bill's provisions raise constitutional questions; however, the Department has recommended against executive approval of the bill, not on constitutional grounds, but because of the inclusion of the plant-closing provisions.

The controversial plant-closing provisions in the bill would require companies employing more than 100 individuals to give 60 days advance notice of plant-closing or large layoff plans. The Administration has long opposed the plant-closing provision, and the President has indicated that he will veto H.R. 3 due to the inclusion of that provision.

* * * * *

Organized Crime

On April 11, 1988, the Permanent Subcommittee on Investigations of the Senate Governmental Affairs Committee, chaired by Senator Nunn, conducted a hearing on "Organized Crime - 25 Years After Valachi." The principal Departmental witnesses were William S. Sessions, Director, Federal Bureau of Investigation, and John Keeney, Acting Assistant Attorney General, Criminal Division.

Director Sessions summarized for the subcommittee the status of the Bureau's efforts in the organized crime area. He indicated that the Bureau was succeeding in weakening the influence of the "mob" and had a number of successes in attacking the "top levels" of organized crime organizations. Director Sessions also reflected the view that organized crime "families" involvement in narcotics was less extensive. Acting Assistant Attorney General Keeney summarized Departmental efforts to effectively prosecute organized crime mobsters and indicated that utilization of RICO, wiretap, and immunity statutes were of great assistance to the Department in dealing with this type of criminal activity.

(Office of Legislative Affairs)

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CASENOTES

OFFICE OF THE SOLICITOR GENERAL

The Solicitor General has authorized the filing of:

A direct appeal in Mid-America Pipeline v. Burnley, (N.D. Okla. Feb. 9, 1988), No. 86-C-815E. The issue is whether Congress unconstitutionally delegated to the Department of Transportation the authority to collect fees from pipeline operators to help pay the cost of federal pipeline safety programs.

An amicus curiae brief in Sappenfield v. Indiana, S. Ct. No. 87-614. The issue is whether Indiana's criminal RICO statute is unconstitutionally vague when used in convictions for obscenity, and whether such use violates the First Amendment.

An amicus curiae brief in support of respondent in Harbison-Walker Refractories v. Breick, S. Ct. No. 87-271. The issue is whether the court of appeals properly rules that an age discrimination employment plaintiff can obtain a jury trial after making out a prima facie case and casting doubt on the defendant's explanation of the employment decision.

* * * * *

CIVIL DIVISION

Supreme Court Reverses Eighth Circuit's Decision That HHS Regulations Require Advance Written Notice of The Lump-Sum Rule

Respondent Jenkins, who was receiving AFDC benefits, received and spent a social security disability award. When she notified her AFDC caseworker of these actions, she was told that, under the new lump-sum rule, she would be disqualified from receiving AFDC benefits for several months. After exhausting her administrative appeals, Jenkins filed suit in district court, asserting that a regulation promulgated by the Secretary required that she, and all other applicants for and recipients of AFDC benefits, be given notice of the lump-sum rule. The district court agreed that such notice was required, and ordered the state to give detailed information about the lump-sum rule to applicants and to mail a written description of the rule to all recipients every six months. The court, however, refused to enjoin the state from applying the rule to Jenkins. The Eighth Circuit upheld the district court's reading of the Secretary's regulations, but reversed the court on its conclusion that the rule had to be applied to Jenkins.

The Supreme Court (Stevens, J.) has now reversed, holding that the regulation at issue simply does not require that AFDC beneficiaries be given written notice of every change in the AFDC program, and that the information dissemination scheme adopted by Minnesota complies with the regulation.

Gardebring v. Jenkins, (No. 86-798, April 19, 1988). DJ # 145-16-3029.

Attorneys: John F. Cordes, FTS 633-3380
Robert K. Rasmussen, FTS 633-3424

* * * * *

Fourth Circuit Rejects De Novo Review in Reverse FOIA Case

This "reverse" Freedom of Information Act (DOJ) case was brought by a submitter of contract bid information to enjoin the Department of Justice from releasing to a competitor, pursuant to the FOIA, unit pricing information submitted by plaintiff to DOJ. The district court granted summary judgment for DOJ, and the Fourth Circuit has just affirmed in a published opinion which

upholds our argument that de novo judicial review is inappropriate in a reverse FOIA case where an adequate administrative record is created. The Fourth Circuit's opinion elaborates on the requirements for an adequate administrative review. It also affirmed the district court's ruling that, on the merits, the unit pricing data was releasable since there are too many ascertainable variables in the unit price calculation to permit a competitor to gain a competitive edge from the release.

Acumenics Research & Technology v. Department of Justice, (No. 87-1650, April 5, 1988). DJ # 145-12-7597.

Attorneys: Leonard Schaitman, FTS 633-3441
Stuart Frisch, JMD, FTS 633-3452

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Fourth Circuit Issues Petition on Mandamus To Restrain District Judge From Disclosing Classified Documents To A Law Clerk Who Has Not Obtained A Security Clearance

In this FOIA suit, the district court (McMillan, J.) indicated that it would permit law clerks to review classified documents sought by plaintiff. The Department stated that it did not object to permitting the clerk to view the documents, so long as the clerk first obtained a security clearance. The district court rejected this proposal, ruling that the Department sought to encroach on the prerogatives of the judiciary. We filed a petition for a writ of mandamus to direct the district court not to disclose the documents to its clerk unless he acquired an appropriate clearance.

After granting our motion for an emergency stay, the court of appeals (Judges Hall, Phillips and Sprouse) has now issued a writ of mandamus. The court noted its concern for potentially damaging disclosure of classified material in the course of the judicial process and emphasized that preserving the secrecy of classified information is a matter of compelling interest. The court also noted that a writ of mandamus is properly issued not only to correct clear error but also to exercise supervisory control necessary to proper judicial administration.

In re Department of Justice (No. 87-1205, April 7, 1988). DJ # CD-New.

Attorneys: Leonard Schaitman, FTS 633-3441
Mark B. Stern, FTS 633-5534

* * * * *

Ninth Circuit Upholds Civil Money Penalty Imposed Against Psychologist For Filing False Medicare Claims, Rejecting Argument That The Penalty Was Criminal In Nature

In a short per curiam opinion, the Ninth Circuit (Sneed, Hug, Kozinski), joined the Tenth and Eleventh Circuits in rejecting the argument that civil monetary penalties imposed pursuant to the Civil Monetary Penalties Law for filing false Medicare or Medicaid claims are, despite Congress' intent, criminal in nature.

Scott v. Bowen, (No. 87-7281, April 27, 1988).
DJ # 137-11-1128.

Attorneys: Anthony J. Steinmeyer, FTS 633-3388
John C. Hoyle, FTS 633-3547

* * * * *

Tenth Circuit Vacates Preliminary Injunction Requiring Air Force to Reinstate Plaintiff's Security Clearance And Prohibiting Air Force From Releasing Information Pertaining To Plaintiff's Suitability For a Security Clearance

The Air Force suspended Hill's Top Secret security clearance -- pending further adjudication -- because of Hill's misuse of government telephones and his unauthorized removal of papers from a superior's desk. Before the Air Force completed its further review, however, it removed Hill from his job based on the same conduct which had caused the Air Force to suspend Hill's security clearance. Hill filed an action before the Merit Systems Protection Board challenging his removal. The Board upheld the removal. Hill also filed the instant action challenging, in part, the suspension of his security clearance as a deprivation of a property and liberty interest without due process. Hill sought and obtained a preliminary injunction requiring the Air Force to restore his security clearance and prohibiting the Air Force from releasing information in its files to private or other governmental agencies investigating plaintiff's suitability for a security clearance.

The Tenth Circuit reversed, holding that the district court improperly based its jurisdiction on constitutional grounds and thus improperly evaluated the motives and merits of the agency's actions with respect to Hill's security clearance. The court ruled that the district court did have jurisdiction in general with respect to whether procedures were violated but found that, in view of Hill's removal, further review of the procedures followed in suspending Hill's clearance, and of the agency's refusal to continue to adjudicate the matter following Hill's removal from misconduct, was unnecessary and inappropriate. Finally, the court ruled that even where procedures have been violated, the district court is not empowered to order a reinstatement of the security clearance, but can only remand the matter to the agency for further proceedings.

Hill v. Air Force, (No. 86-2418, March 30, 1988).
DJ # 145-14-2249.

Attorneys: Barbara L. Herwig, FTS 633-5425
Howard Scher, FTS 633-4820

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LAND AND NATURAL RESOURCES DIVISION

Bankruptcy Discharge Exonerates Coal Mine Operator From Performing Reclamation Obligations To The Extent His Performance Requires Him To Spend Money

Donovan Lueking, the vice-president and sole shareholder of Whizco, Inc., abandoned a surface mining site without performing the reclamation work to restore the surface, as required by Section 521 of the Surface Mining and Reclamation Act, 30 U.S.C. 1271. The Secretary of the Interior filed suit in district court seeking a mandatory injunction requiring Lueking to reclaim the abandoned mine site. Lueking's sole defense was that he was 63 years old and in bankruptcy proceedings he had surrendered all his mining equipment and coal leases, and lacked the physical means or ability to perform the work himself. The district court denied the injunction citing Ohio v. Kovacs, 469 U.S. 274 (1985).

The court of appeals affirmed, and reversed in part. Recognizing the distinction between Kovacs (where the State was seeking money to defray its cleanup costs) and this case (where the Secretary was not seeking money), the court ruled that it was looking at the substance, not the form, of the relief sought.

Therefore, it affirmed the judgment that Lueking's bankruptcy discharged his obligation to reclaim the mine site. To the extent that Lueking can comply with the Secretary's orders without spending money, his bankruptcy did not discharge his obligation to comply with the orders, and the court reversed that part of the district court's judgment. The court of appeals wrote that if, in the future, Lueking may own equipment which would permit him to personally reclaim some portion of the site, to that extent he is not discharged.

United States v. Whizco, Inc., et al., 6th Cir. No. 87-5317, (March 7, 1988). DJ #90-1-18-4027.

Attorneys: Jacques B. Gelin, FTS 633-2762
Robert L. Klarquist, FTS 633-2731

* * * * *

Air Force Not Required To Prepare An Environmental Impact Statement Discussing Effects On Nuclear War In Connection With Its Ground Wave Emergency Network

The court of appeals affirmed the district court's holding that the Air Force is not required to prepare an environmental impact statement (EIS) which discusses the effects of nuclear war in connection with its Ground Wave Emergency Network (GWEN). GWEN is a communication system consisting of several hundred towers across the United States which is designed to function in the high electro-magnetic pulse environment which would be produced by a high altitude nuclear burst. Citing its decision in Warm Springs Dam Task Force v. Gribble, the court noted that not "every conceivable environmental impact must be discussed in an EIS." It held that although "experts and laymen disagree about the precise impact of a nuclear exchange, everyone recognizes that these effects would be catastrophic. Detailing them would serve no useful purpose." The court held that No GWEN was not seeking a review of the merits of the decision to deploy GWEN, but rather was contending that nuclear war should be discussed in an EIS since there were substantial questions as to whether deployment of GWEN could reasonably result in a nuclear war. Of course, our view is that assessing that very issue requires addressing the political question.

No Gwen Alliance of Lane County v. Aldridge, 9th Cir. No. 86-4082, (March 9, 1988). DJ #90-1-4-3083.

Attorneys: J. Carol Williams, FTS 633-5580
Dirk D. Snel, FTS 633-4400

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Custer Proviso In Section 55(e)(2) Of The Surface Mining Control And Reclamation Act Is Not An Absolute Bar To Surface Mining Within Custer National Forest

The government appealed from a judgment construing the Custer Proviso in Section 52(e)(2)(B) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1272(e)(2)(B), as an absolute bar to surface mining in Custer National Forest. Interior estimates that the deposits in the forest may be worth up to $10 billion.

Section 522(e)(2) prohibits surface coal mining operations on federal lands in any national forest unless the Secretary of the Interior finds there are no values incompatible with surface mining and either (A) surface impacts are incident to an underground coal mine, or (B) the Secretary of Agriculture determines, with respect to unforested lands west of the 100th meridian, that surface mining complies with this Act and three listed federal statutes regulating the management of federal lands, "[a]nd provided further, [t]hat no surface mining operations may be permitted within the boundaries of the Custer National Forest."

The court held (1) that plaintiffs' claim was not barred by the exhaustion or ripeness doctrine, because it involves purely a legal issue, and (2) on the merits that the Secretary's construction of the statute, which barred mining on federal lands only, was reasonable, supported by the legislative history, and entitled to deference.

Meridian Land and Mineral Co. v. Hoder; Theodore Fletcher, et al. v. United States, 9th Cir. No. 85-4385 and 85-4405 (March 25, 1988). DJ # 90-1-18-3844.

Attorneys: Jacques B. Gelin, FTS 633-2762
Robert L. Klarquist, FTS 633-2731

* * * * *

Secretary Of The Interior Lacked Authority To Market Unutilized Irrigation Water For Industrial Purposes From Lake Oahe

Under Section 9(c) of the Flood Control Act of 1944, (FCA) Interior was given authority over "reclamation developments to be undertaken by the Secretary of the Interior" as part of the Pick-Sloan plan. Section 9(c) of the Reclamation Project Act of 1939 permitted Interior to market irrigation water for "miscellaneous purposes," including industrial use.

Other sections of the FCA, notably sections 6 and 8, concerned the Army's authority over flood control reservoirs in general; these sections were not limited to the facilities outlined in the Pick-Sloan project. Section 6 expressly permitted the Army to market "surplus" water for industrial purposes from its reservoirs. Section 8 of the FCA provided that "hereafter" when the Army found, upon Interior's recommendation, that one of Army's reservoirs would be useful for irrigation purposes, Interior could construct such irrigation works as Congress authorized.

Although the Pick-Sloan project envisioned large-scale irrigation works, the need for such works never materialized and some of the irrigation projects detailed in the Pick-Sloan plan, including works at the Oahe reservoir, were later deauthorized. As a result, there was a large quantity of unutilized irrigation water impounded in Lake Oahe. Traditionally, the Army had determined that none of the water in the Pick-Sloan facilities (including Oahe) was "surplus," since it was used for other project purposes, notably for hydroelectric power generation. Thus, the irrigation water stored in Oahe was not used for irrigation or for other reclamation purposes.

During the oil crisis of the mid-1970's, Interior, after consulting with the Army, devised a program designed to market this unutilized irrigation water to aid in the development of the coal resources located in the upper basin states. A Memorandum of Understanding (MOU) was signed by the two agencies under which Interior, both on its own behalf and as an agent for the Army, could market for industrial use unutilized irrigation water stored in the six Corps-controlled mainstem reservoirs. Interior's authority under the MOU was premised on section 9(c) of the FCA and on section 9(c) of the Reclamation Project Act of 1939. Two water marketing contracts were signed by Interior during the existence of the MOU and a third contract, signed after the MOU expired in 1978, referred to the MOU.

In 1982, after the MOU had expired, Interior entered into the contract with ETSI Pipeline Co., permitting ETSI to withdraw up to 20,000 acre-feet of water from Lake Oahe for use in a coal slurry pipeline. Shortly thereafter, this suit was filed by several lower basin states (and others), challenging Interior's authority to market water from Corps-controlled reservoirs.

On our petition for certiorari, the Supreme Court rejected our focus on section 9, finding that the FCA should be read as a single statute. We had asserted that, since section 9 was especially addressed to the Pick-Sloan project, its provisions, rather than the more generally applicable sections 6 and 8, applied to Interior's use of Pick-Sloan reservoirs. The Court disagreed, ruling that, under section 6, the Army had exclusive authority to market water for industrial purposes from all flood control reservoirs, including the Pick-Sloan project reservoirs. The Court also relied upon section 8, which provided that "hereafter" when Army determined, upon Interior's recommendation that an Army reservoir could be useful for irrigation purposes, Interior could construct additional irrigation works approved by Congress. We had asserted that section 8 did not apply to Pick-Sloan reservoirs, since Congress, in section 9 of the FCA, had already determined that these reservoirs were useful for reclamation purposes and no further finding "hereafter" by the Army was needed. We also argued that, since Interior here was not constructing additional irrigation works, section 8 was inapplicable. The Court did not address either of these arguments. Instead, it agreed with the district court's assessment that Interior's reading of the FCA was not reasonable and, therefore, not entitled to deference.

ETSI Pipeline Project v. Missouri, S. Ct. No. 86-939 and 86-941 (February 23, 1988). DJ # 90-1-4-2488.

Attorneys: Kathleen Dewey, FTS 633-4519
Edward J. Shawaker, FTS 633-4010
Jeff Minear, Office of the Solicitor General, FTS 633-4063

* * * * *

TAX DIVISION

Federal Circuit Holds Government Is Not Precluded From Pursuing $11 Million Asserted Liability In Exxon Case.

Exxon Corporation v. United States (Cl. Ct.). On March 8, 1988, the Federal Circuit reversed the Claims Court and ruled in favor of the Government. The appellate court held that the Claims Court had misread its prior decision in this case (785 F.2d 277 (1986)), and had erroneously applied the "law of the case" to preclude the Government from pursuing, by way of offset to Exxon's $27 million bad debt deduction for its Cuban losses, two issues totalling $11 million. The appellate court remanded for further proceedings.

* * * * *

Surcharge Added to Electric Bills Held To Be Income Rather than Nontaxable Loan.

Iowa Southern Utilities Co. v. United States (Fed. Cir.). On March 15, 1988, the Federal Circuit affirmed the judgment of the Claims Court denying the taxpayer's claim for refund of $6 million in income taxes. The taxpayer, a public utility, was permitted by the state regulatory commission to recover its costs of financing the construction of a new power plant by increasing its rates for electric service through a surcharge for 3 years; after the plant had been placed in service, the $12.3 million in additional revenue collected through the surcharge was to be "refunded," without interest, by means of a negative surcharge on electric rates for 30 years. The court of appeals held that the surcharge amounts were includable in the taxpayer's gross income, and could not be considered a "loan" from its customers. The court also held that the taxpayer's obligation to "refund" the surcharge collections did not give rise to a corresponding deduction, but merely required the company to lower its rates, and thus reduce its income, pursuant to a regulatory formula. Judge Friedman dissented from this latter holding, believing that the stipulation between the taxpayer and the state commission requiring taxpayer to "refund" the surcharge revenue established a fixed obligation that met the "all events test" for deductibility of the surcharge in each year it was charged to customers.

* * * * *

Supreme Court Holds That a Controlled Corporation Can Be Disregarded For Federal Tax Purposes Where It Serves As Taxpayers' "Agent".

Commissioner v. Bollinger (Sup. Ct.). On March 22, 1988, the Supreme Court, in a unanimous 8-0 decision, affirmed the decision of the Court of Appeals for the Sixth Circuit, resolving a conflict between that Circuit and the Fourth and Fifth Circuits in favor of the taxpayers. The taxpayers, partners in a partnership formed to develop real property, were unable to obtain financing at market interest rates due to the Kentucky usury laws. But these laws generally do not apply to corporations, so they formed a corporation to hold title to the property in question and to borrow the funds for development. The Supreme Court agreed with taxpayers that the corporation served as their "agent," and was not a separate taxable entity, rendering the losses incurred in developing the property deductible on their personal returns.

The Court, in an opinion by Justice Scalia, ruled that it would treat a controlled corporation as an agent where "the fact that the corporation is acting as agent for its shareholders with respect to a particular asset is set forth in a written agreement at the time the asset is acquired, the corporation functions as agent and not principal with respect to the asset for all purposes, and the corporation is held out as the agent and not principal in all dealings with third parties relating to the asset." All these factors were present here. The Court was of the view that its holding here posed no threat to the principle requiring recognition of corporations as taxable entities distinct from their shareholders, although it conceded that "it is reasonable for the Commissioner to demand unequivocal evidence of genuineness [of the putative agency] in the corporation-shareholder context, in order to prevent evasion."

* * * * *

APPENDIX

TELETYPES TO ALL UNITED STATES ATTORNEYS FROM THE EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

4/1/88 From John Shaffer, Assistant Director, Financial Management Staff, Executive Office for United States Attorneys, to All Administrative Officers, re: Asset Forfeiture Training.

4/8/88 From Joe B. Brown, Chairman, Sentencing Guidelines Subcommittee, to All United States Attorneys, re: Liaison and Clearinghouse for Sentencing Issues.

4/19/88 From Richard L. DeHaan, Associate Director for Administrative Services, Executive Office for United States Attorneys, to All United States Attorneys, re: Summer Employment.

5/2/88 From Robert A. Whiteley, Assistant Director, Financial Operations Service, Justice Management Division, to All United States Attorneys, re: Use of Frequent Flyer Bonus Points, Mileage Awards and Coupons.

* * * * *

LISTING OF ALL BLUESHEETS IN EFFECT
MAY 15, 1988

AFFECTS USAM	TITLE NO.	DATE	SUBJECT
1-1.550*	TITLE 1	6/25/87	Communications from the Department
1-8.000**	TITLE 1	7/13/87	Relations with Congress
1-11.350*	TITLE 1	5/06/86	Policy With Regard to Defense Requests for Jury Instruction on Immunized Witnesses
9-1.177**	TITLE 9	12/31/85	Authorization for Negotiated Concessions in Organized Crime Cases
9-2.132*	TITLE 9	12/31/85	Policy Limitations on Institution of Proceedings - Internal Security Matters
9-2.133*	TITLE 9	5/08/87	Consultation Prior to Initiation of Criminal Charges (One-Year Sunset Provision Added)
9-2.136*	TITLE 9	6/04/86	Investigative and Prosecutive Policy for Acts of International Terrorism
9-2.136*	TITLE 9	10/24/86	Investigative and Prosecutive Policy for Acts of International Terrorism
9-2.151*	TITLE 9	12/31/85	Policy Limitations - Prosecutorial and Other Matters, International Matters

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* Bluesheet has been approved by the Advisory Committee and will be incorporated into revised Manual.

** Tabled by Attorney General's Advisory Committee.

AFFECTS USAM	TITLE NO.	DATE	SUBJECT
9-2.160*	TITLE 9	7/18/85	Policy With Regard to Issuance of Subpoenas to Attorneys for Information Relating to the Representation of Clients
9-6.400	TITLE 9	3/17/88	Cancelling Pre-trial Detention Reporting Requirements
9-7.2000*	TITLE 9	4/06/87	The Electronic Communications Act of 1986
9-7.5000*	TITLE 9	4/06/87	Forms - The Electronic Communications Act of 1986
9-11.220 C.8.*	TITLE 9	4/14/86	All Writs Act Guidelines
9-11.368(A)*	TITLE 9	2/04/86	Amendment to Rule 6(e), Federal Rules of Criminal Procedure Permitting Certain Disclosure to State and Local Law Enforcement Officials
9-20.215*	TITLE 9	2/11/86	Policy Concerning State Jurisdiction Over Certain Offenses in Indian Reservations
9-38-211*	TITLE 9	4/23/87	Administrative Forfeiture of Real Property
9-75.120*	TITLE 9	9/23/87	Multiple Prosecutions of Obscenity Offenses
9-79.252*	TITLE 9	4/01/87	Consultation Prior to Institution of Criminal Charges Under 31 U.S.C. §5324 (One-Year Sunset Provision Included)
9-100.205**	TITLE 9	4/01/87	Controlled Substance Analogue Enforcement Act

AFFECTS USAM	TITLE NO.	DATE	SUBJECT
9-100-280*	TITLE 9	1/15/87	Consultation Prior to Institution or Dismissal of Criminal Charges Under Continuing Criminal Enter- prise Statute
9-103-132; 9-103.140*	TITLE 9	6/30/86	Revisions to the Prosecutive Guidelines for the Con- trolled Substance Registrant Protection Act Concerning Consultation Prior to Prosecution
9-103.300*	TITLE 9	5/28/87	Mail Order Drug Paraphernalia Control Act (One-Year Sunset Provision Included)
9-105.000*	TITLE 9	1/15/87	Money Laundering
9-105.200*	TITLE 9	4/01/87	Forfeiture of Proceeds of Foreign Controlled Substance Violations (One-Year Sunset Provision Included)
9-110.800*	TITLE 9	7/07/86	Murder-for-Hire and Violent Crimes in Aid of Racketeering Activity
9-111.800*	TITLE 9	1/15/87	Forfeiture of Substitute Assets (Bluesheet will expire 6/15/88)
9-131.030*	TITLE 9	5/13/86	Consultation Prior to Prosecution
9-131.040; 9-131.180	TITLE 9	10/06/86	Hobbs Act Approval
9-131.110*	TITLE 9	5/13/86	Hobbs Act Robbery
10-2.186	TITLE 10	9/27/85	Grand Jury Reporters

AFFECTS USAM	TITLE NO.	DATE	SUBJECT
10-2.315*	TITLE 10	11/17/86	Veterans Readjustment Appointment (VRA) Authority
10-2.340* et seq.	TITLE 10	5/18/87	Youth and Student Employment Programs
10-2.420	TITLE 10	11/12/87	Position/Resource Management Review
10-2.517*	TITLE 10	8/16/87	Performance Management and Recognition System
10-2.534*	TITLE 10	3/20/86	Compensatory Time
10-2.643/644	TITLE 10	1/06/88	Performance Appraisal
10-2.645*	TITLE 10	7/23/87	Performance Appraisal -- Performance Management and Recognition System
10-2.650*	TITLE 10	1/07/87	Awards
10-2.910*	TITLE 10	7/16/87	Attendance and Leave and Hours of Duty
10-8.120*	TITLE 10	1/31/86	Policy Concerning Handling of Agency Debt Claim Referrals Where the Applicable Statute of Limitations Has Run
11-10-3.320; 321*	TITLE 11	9/23/87	Return of Certain Bankruptcy Cases to Agencies for Collection
11-10-5.220**	TITLE 11	9/18/87	Closing Judgment Cases as Uncollectible

* * * * *

CUMULATIVE LIST OF CHANGING FEDERAL CIVIL POSTJUDGMENT INTEREST RATES

(as provided for in the amendment to the Federal postjudgment interest statute, 28 U.S.C. § 1961, effective October 1, 1982)

Effective Date	Annual Rate	Effective Date	Annual Rate
12-20-85	7.57%	04-10-87	6.30%
01-17-86	7.85%	05-13-87	7.02%
02-14-86	7.71%	06-05-87	7.00%
03-14-86	7.06%	07-03-87	6.64%
04-11-86	6.31%	08-05-87	6.98%
05-14-86	6.56%	09-02-87	7.22%
06-06-86	7.03%	10-01-87	7.88%
07-09-86	6.35%	10-23-87	6.90%
08-01-86	6.18%	11-20-87	6.93%
08-29-86	5.63%	12-18-87	7.22%
09-26-86	5.79%	01-15-88	7.14%
10-24-86	5.75%	02-12-88	6.59%
11-21-86	5.77%	03-11-88	6.71%
12-24-86	5.93%	04-08-88	7.01%
01-16-87	5.75%		
02-13-87	6.09%		
03-13-87	6.04%		

NOTE: When computing interest at the daily rate, round (5/4) the product (i.e., the amount of interest computed) to the nearest whole cent.

For a cumulative list of those Federal civil postjudgment interest rates effective October 1, 1982, through December 19, 1985, see United States Attorney's Bulletin, Vol. 34, No. 1, Page 25, January 17, 1986.

UNITED STATES ATTORNEYS

DISTRICT	U.S. ATTORNEY
Alabama, N	Frank W. Donaldson
Alabama, M	James Eldon Wilson
Alabama, S	J. B. Sessions, III
Alaska	Michael R. Spaan
Arizona	Stephen M. McNamee
Arkansas, E	Charles A. Banks
Arkansas, W	J. Michael Fitzhugh
California, N	Joseph P. Russoniello
California, E	David F. Levi
California, C	Robert C. Bonner
California, S	Peter K. Nunez
Colorado	Michael J. Norton
Connecticut	Stanley A. Twardy, Jr.
Delaware	William C. Carpenter, Jr.
District of Columbia	Jay B. Stephens
Florida, N	K. Michael Moore
Florida, M	Robert W. Merkle
Florida, S	Leon B. Kellner
Georgia, N	Robert L. Barr, Jr.
Georgia, M	Edgar Wm. Ennis, Jr.
Georgia, S	Hinton R. Pierce
Guam	K. William O'Connor
Hawaii	Daniel A. Bent
Idaho	Maurice O. Ellsworth
Illinois, N	Anton R. Valukas
Illinois, S	Frederick J. Hess
Illinois, C	J. William Roberts
Indiana, N	James G. Richmond
Indiana, S	Deborah J. Daniels
Iowa, N	Charles W. Larson
Iowa, S	Christopher D. Hagen
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Kentucky, W	Joseph M. Whittle
Louisiana, E	John Volz
Louisiana, M	P. Raymond Lamonica
Louisiana, W	Joseph S. Cage, Jr.
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Missouri, W	Robert G. Ulrich
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Nebraska	Ronald D. Lahners
Nevada	William A. Maddox
New Hampshire	Richard V. Wiebusch
New Jersey	Samuel A. Alito, Jr.
New Mexico	William L. Lutz
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Ohio, S	D. Michael Crites
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Oklahoma, W	William S. Price
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Pennsylvania, M	James J. West
Pennsylvania, W	J. Alan Johnson
Puerto Rico	Daniel F. Lopez-Romo
Rhode Island	Lincoln C. Almond
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South Dakota	Philip N. Hogen
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Tennessee, M	Joe B. Brown
Tennessee, W	W. Hickman Ewing, Jr.
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Texas, S	Henry K. Oncken
Texas, E	Robert J. Wortham
Texas, W	Helen M. Eversberg
Utah	Brent D. Ward
Vermont	George J. Terwilliger III
Virgin Islands	Terry M. Halpern
Virginia, E	Henry E. Hudson
Virginia, W	John P. Alderman
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Washington, W	Gene S. Anderson
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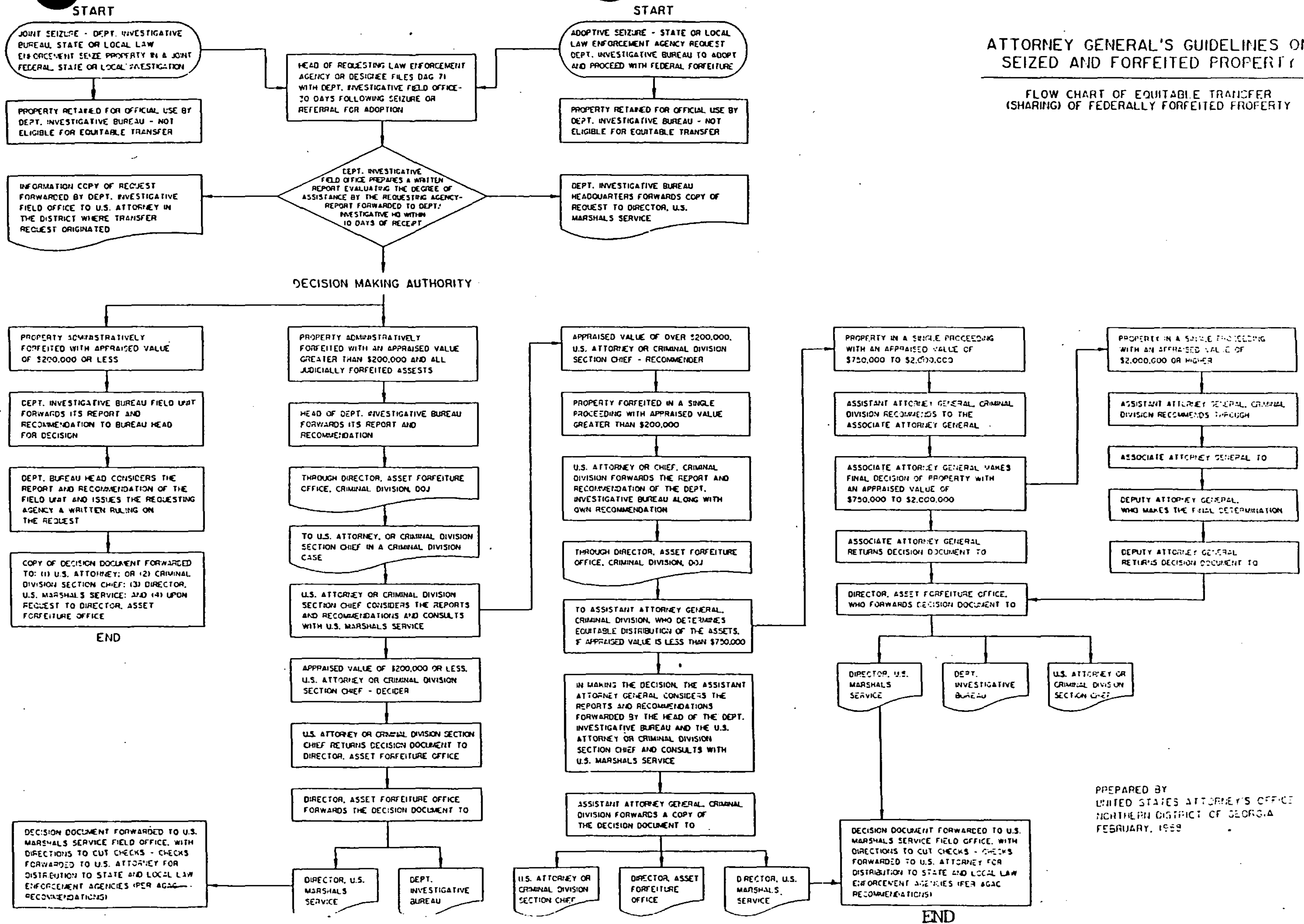
West Virginia, S	Michael W. Carey
Wisconsin, E	John E. Fryatt
Wisconsin, W	Patrick J. Fiedler
Wyoming	Richard A. Stacy
North Mariana Islands	K. William O'Connor


ATTORNEY GENERAL'S GUIDELINES ON SEIZED AND FORFEITED PROPERTY
FLOW CHART OF EQUITABLE TRANSFER (SHARING) OF FEDERALLY FORFEITED PROPERTY
START
JOINT SEIZURE - DEPT. INVESTIGATIVE BUREAU, STATE OR LOCAL LAW ENFORCEMENT SEIZE PROPERTY IN A JOINT FEDERAL, STATE OR LOCAL INVESTIGATION
PROPERTY RETAINED FOR OFFICIAL USE BY DEPT. INVESTIGATIVE BUREAU - NOT ELIGIBLE FOR EQUITABLE TRANSFER
START
ADOPTIVE SEIZURE - STATE OR LOCAL LAW ENFORCEMENT AGENCY REQUEST DEPT. INVESTIGATIVE BUREAU TO ADOPT AND PROCEED WITH FEDERAL FORFEITURE
PROPERTY RETAINED FOR OFFICIAL USE BY DEPT. INVESTIGATIVE BUREAU - NOT ELIGIBLE FOR EQUITABLE TRANSFER
HEAD OF REQUESTING LAW ENFORCEMENT AGENCY OR DESIGNEE FILES DAG 71 WITH DEPT. INVESTIGATIVE FIELD OFFICE-30 DAYS FOLLOWING SEIZURE OR REFERRAL FOR ADOPTION
DEPT. INVESTIGATIVE FIELD OFFICE PREPARES A WRITTEN REPORT EVALUATING THE DEGREE OF ASSISTANCE BY THE REQUESTING AGENCY-REPORT FORWARDED TO DEPT. INVESTIGATIVE HQ WITHIN 10 DAYS OF RECEIPT
INFORMATION COPY OF REQUEST FORWARDED BY DEPT. INVESTIGATIVE FIELD OFFICE TO U.S. ATTORNEY IN THE DISTRICT WHERE TRANSFER REQUEST ORIGINATED
DEPT. INVESTIGATIVE BUREAU HEADQUARTERS FORWARDS COPY OF REQUEST TO DIRECTOR, U.S. MARSHALS SERVICE
DECISION MAKING AUTHORITY
PROPERTY ADMINISTRATIVELY FORFEITED WITH APPRAISED VALUE OF $200,000 OR LESS
DEPT. INVESTIGATIVE BUREAU FIELD UNIT FORWARDS ITS REPORT AND RECOMMENDATION TO BUREAU HEAD FOR DECISION
DEPT. BUREAU HEAD CONSIDERS THE REPORT AND RECOMMENDATION OF THE FIELD UNIT AND ISSUES THE REQUESTING AGENCY A WRITTEN RULING ON THE REQUEST
COPY OF DECISION DOCUMENT FORWARDED TO: (1) U.S. ATTORNEY; OR (2) CRIMINAL DIVISION SECTION CHIEF; (3) DIRECTOR, U.S. MARSHALS SERVICE; AND (4) UPON REQUEST TO DIRECTOR, ASSET FORFEITURE OFFICE
END
PROPERTY ADMINISTRATIVELY FORFEITED WITH AN APPRAISED VALUE GREATER THAN $200,000 AND ALL JUDICIALLY FORFEITED ASSETS
HEAD OF DEPT. INVESTIGATIVE BUREAU FORWARDS ITS REPORT AND RECOMMENDATION
THROUGH DIRECTOR, ASSET FORFEITURE OFFICE, CRIMINAL DIVISION, DOJ
TO U.S. ATTORNEY, OR CRIMINAL DIVISION SECTION CHIEF IN A CRIMINAL DIVISION CASE
U.S. ATTORNEY OR CRIMINAL DIVISION SECTION CHIEF CONSIDERS THE REPORTS AND RECOMMENDATIONS AND CONSULTS WITH U.S. MARSHALS SERVICE
APPRAISED VALUE OF $200,000 OR LESS, U.S. ATTORNEY OR CRIMINAL DIVISION SECTION CHIEF - DECIDER
U.S. ATTORNEY OR CRIMINAL DIVISION SECTION CHIEF RETURNS DECISION DOCUMENT TO DIRECTOR, ASSET FORFEITURE OFFICE
DIRECTOR, ASSET FORFEITURE OFFICE FORWARDS THE DECISION DOCUMENT TO
DIRECTOR, U.S. MARSHALS SERVICE
DEPT. INVESTIGATIVE BUREAU
DECISION DOCUMENT FORWARDED TO U.S. MARSHALS SERVICE FIELD OFFICE, WITH DIRECTIONS TO CUT CHECKS - CHECKS FORWARDED TO U.S. ATTORNEY FOR DISTRIBUTION TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES (PER AGAC RECOMMENDATIONS)
APPRAISED VALUE OF OVER $200,000, U.S. ATTORNEY OR CRIMINAL DIVISION SECTION CHIEF - RECOMMENDER
PROPERTY FORFEITED IN A SINGLE PROCEEDING WITH APPRAISED VALUE GREATER THAN $200,000
U.S. ATTORNEY OR CHIEF, CRIMINAL DIVISION FORWARDS THE REPORT AND RECOMMENDATION OF THE DEPT. INVESTIGATIVE BUREAU ALONG WITH OWN RECOMMENDATION
THROUGH DIRECTOR, ASSET FORFEITURE OFFICE, CRIMINAL DIVISION, DOJ
TO ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, WHO DETERMINES EQUITABLE DISTRIBUTION OF THE ASSETS, IF APPRAISED VALUE IS LESS THAN $750,000
IN MAKING THE DECISION, THE ASSISTANT ATTORNEY GENERAL CONSIDERS THE REPORTS AND RECOMMENDATIONS FORWARDED BY THE HEAD OF THE DEPT. INVESTIGATIVE BUREAU AND THE U.S. ATTORNEY OR CRIMINAL DIVISION SECTION CHIEF AND CONSULTS WITH U.S. MARSHALS SERVICE
ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION FORWARDS A COPY OF THE DECISION DOCUMENT TO
U.S. ATTORNEY OR CRIMINAL DIVISION SECTION CHIEF
DIRECTOR, ASSET FORFEITURE OFFICE
DIRECTOR, U.S. MARSHALS SERVICE
PROPERTY IN A SINGLE PROCEEDING WITH AN APPRAISED VALUE OF $750,000 TO $2,000,000
ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION RECOMMENDS TO THE ASSOCIATE ATTORNEY GENERAL
ASSOCIATE ATTORNEY GENERAL MAKES FINAL DECISION OF PROPERTY WITH AN APPRAISED VALUE OF $750,000 TO $2,000,000
ASSOCIATE ATTORNEY GENERAL RETURNS DECISION DOCUMENT TO
DIRECTOR, ASSET FORFEITURE OFFICE, WHO FORWARDS DECISION DOCUMENT TO
PROPERTY IN A SINGLE PROCEEDING WITH AN APPRAISED VALUE OF $2,000,000 OR HIGHER
ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION RECOMMENDS THROUGH
ASSOCIATE ATTORNEY GENERAL TO
DEPUTY ATTORNEY GENERAL, WHO MAKES THE FINAL DETERMINATION
DEPUTY ATTORNEY GENERAL RETURNS DECISION DOCUMENT TO
DIRECTOR, U.S. MARSHALS SERVICE
DEPT. INVESTIGATIVE BUREAU
U.S. ATTORNEY OR CRIMINAL DIVISION SECTION CHIEF
DECISION DOCUMENT FORWARDED TO U.S. MARSHALS SERVICE FIELD OFFICE, WITH DIRECTIONS TO CUT CHECKS - CHECKS FORWARDED TO U.S. ATTORNEY FOR DISTRIBUTION TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES (PER AGAC RECOMMENDATIONS)
END
PREPARED BY
UNITED STATES ATTORNEY'S OFFICE
NORTHERN DISTRICT OF GEORGIA
FEBRUARY,

U.S. Department of Justice

Office of the Associate Attorney General

VOL. 36, NO. 5 MAY 15, 1988 PAGE 119

The Associate Attorney General Washington, D.C. 20530

NOV 3 1987

MEMORANDUM

TO: All Litigating Division Heads and
All United States Attorneys

FROM: Stephen S. Trott
Associate Attorney General

SUBJECT: Interim Sentencing Advocacy and Case Settlement Policy Under New Sentencing Guidelines

General Comment

The new Sentencing Guidelines became effective November 1, 1987, for all offenses committed on or after that date. Under the new system, the nature of the charge to which a defendant pleads guilty is particularly important because it will more precisely than ever determine the defendant's actual sentence. It should be remembered that underlying the concept of determinate sentencing guidelines is the idea that sentences should be more uniform; that persons similarly situated in terms of offense and offender characteristics should be similarly penalized.

Although there is a two level adjustment for acceptance of responsibility (which is not to be automatically recommended or granted simply because there is a plea), the Guidelines do not provide a specific or universal incentive for defendants to plead guilty in lieu of going to trial. It will be up to the Government to insure that inconsistencies in the treatment of plea agreements do not frustrate the purpose of the Guidelines. As noted in the commentary to Chapter 6, Part B, of the Guidelines, Congress indicated that it expected judges "to examine plea agreements to make certain that prosecutors have not used plea bargaining to undermine the sentencing guidelines." S.Rep. 98-225, 98th Cong., 1st Sess. 63, 167 (1983). Our conduct will therefore be under scrutiny both by the courts, the Congress, and the public.

The overriding principle governing the conduct of plea negotiations is that plea agreements should not be used to circumvent the Guidelines. This principle is consistent with the guidelines governing charging policies and plea agreements set

forth in the Principles of Federal Prosecution in Chapter 27 of Title 9 of the United States Attorneys' Manual. For example, charges should not be filed simply to exert leverage to induce a plea. Rather, the prosecutor should charge the most serious offense or offenses consistent with the defendant's conduct. Similarly, once the charging decision is made, a plea should ordinarily be taken to the most serious offense or offenses charged that adequately and accurately describe the gravamen of the defendant's conduct.[1/] If this policy is not consistently followed, then the principle of uniform sentences for similar offenses will be undermined.

The overriding principle of this interim case settlement policy is full disclosure of the circumstances of the actual offense or offenses. Attempts to circumvent the Guidelines by manipulation of charges, counts, and factual statements to present an unrealistic or incomplete picture of a defendant's offense or offender characteristics should not be permitted as it will undermine the principal purpose of the Guidelines: greater uniformity in sentencing.

The Guidelines themselves place some constraints on negotiating plea agreements. For example, the Policy Statement in § 6B1.2(a) states that in the case of a plea agreement that includes the dismissal of any charges, perhaps the most common plea agreement under the current system, the court may accept the agreement if the court determines that "the remaining charges adequately reflect the seriousness of the actual offense behavior and that accepting the agreement will not undermine the statutory purposes of sentencing." Therefore, the dismissal of charges will be subject to the scrutiny of the court.

Despite these apparent limitations on plea negotiations, the new Guidelines do not remove all incentives to plead guilty nor are there absolutely no incentives which may legitimately be offered to a defendant to plead guilty in lieu of going to trial. A prosecutor may recommend a sentence at the lower end of the 25% range of imprisonment or, when probation is permitted, recommend probation.[2/] The applicability of the reduction of two levels

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1/ Determination of the most serious offense will now require, however, consultation with the Sentencing Guidelines to determine which statutory violation results in the highest offense level. This policy is consistent with the policy set forth in the Principles of Federal Prosecution, Part D, Section 3(c), which states that a defendant should be required to plead guilty to the charges or charges "that makes likely the imposition of an appropriate sentence under all the facts of the case."

2/ Probation is permitted if the minimum sentence for the applicable guideline is six months or less; i.e., below level 11,

(continued...)

for "acceptance of responsibility" is also a proper subject for pre-plea negotiation, bearing in mind that it is not to be automatically recommended or granted simply because there is a plea. (See Guideline 3E1.1.) The combination of these legitimate incentives could result in a very significant reduction in a possible jail sentence or, of course, the elimination of such a sentence where probation is permitted. Within this framework, a prosecutor in the field properly retains considerable discretion in making sentence recommendations.

Further, both the statute and Guidelines permit departures from the normal sentencing range for a particular offense where the Commission has not addressed significant applicable aggravating or mitigating circumstances. 18 U.S.C. § 3553(b). Policy statements in Chapter 5, Part K, address most of the common, appropriate grounds for departure and state criteria for their applicability. Prosecutors will retain considerable discretion in making appropriate recommendations as to the circumstances listed in Chapter 5, Part K, where the criteria are satisfied. However, as to other potential departure grounds, due to the likelihood of appellate litigation and the general statutory policy of limiting the number of departures, approval for their recommendation will be required by the United States Attorney or his designee after consultation with the appropriate litigating division section or official.[3/]

Over the course of the next few months, we will be studying the implementation of the Guidelines to determine more precisely what charge and plea policies need to be adopted to insure that the spirit as well as the letter of the Guidelines are fulfilled. We welcome your comments and suggestions as well as those of others involved in the criminal justice system. In the interim, the following general policies are adopted.

[2/] (...continued)
if category 1, or below level 10, if category 2, etc. Prosecutors are reminded, though, that if the minimum period is more than zero months (which, regardless of the category, will always be the case at level 7 or higher) intermittent or community confinement is required as a condition of probation and thus must always be recommended if imprisonment is not. See generally, Guideline 5B1.1.

[3/] In a case prosecuted by a litigating division section, approval of the Section Chief is required. In any tax case prosecuted by a United States Attorney's Office, approval of the Regional Assistant Chief of the Criminal Section of the Tax Division is required as well as the United States Attorney or his designee. See Appendix A for a list of the designated contacts.

Case Settlement/Appeal Policies

1. Pleas. An attorney for the Government is to accept a plea to the charge which enables a court to impose, through proper application of the Guidelines, the highest sentence provided in the Guidelines for the conduct actually committed, assuming such conduct is readily provable.[4/] If a plea to a singl charge is inadequate to insure a proper sentence under the Guide..ines (including Chapter 3, Part D, on multiple charges), a plea is to be taken to an adequate number of counts to insure that a proper sentence can be imposed. In the event of a pre-indictment plea agreement, adequate charges are to be filed to insure that a proper sentence can be imposed.

In no event is a CCE-principal administrator (i.e. the mandatory life provision) or 18 U.S.C. § 924(c) (use of firearm) charge to be dismissed except with the consent of the Assistant Attorney General of the Criminal Division as to CCE principal administrator charges or the United States Attorney as to 18 U.S.C. § 924(c) charges (unless it cannot be readily proven or unless absolutely necessary to obtain an appropriate sentence for someone who has rendered substantial assistance to the Government).

This policy does not supersede any current specific plea policies set forth in the United States Attorneys Manual for the litigating divisions. For example, if there are tax counts, there must be a plea to the "designated" count or counts unless an exception is approved by the Tax Division. Further, the Lands Division, in an upcoming revision to the United States Attorneys Manual, will require that in a case including a wildlife or environmental count, a plea must include one or more such counts

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4/ In other words, if a defendant is charged with both robbery and theft based on the same conduct, he should be required to plead to the robbery charge even though the Guidelines would permit a departure on a theft conviction for use of weapons, infliction of injuries, etc., which could result in the imposition of an equivalent sentence. Normally the charge whose Guideline provision provides the highest sentence when applied to the conduct in question should be the charge to which a plea is taken. On the other hand, if there is a substantial, good faith doubt as to the ability to prove for legal or evidentiary reasons a particular charge, the prosecutor retains discretion not to pursue that charge as at present. Also, there may be some unusual situations where two charges of comparable seriousness carry significantly different sentences due to the fortuities of Guideline drafting. In those situations, the plea should normally be taken to the charge whose guideline will provide the highest sentence but only if that charge appropriately reflects the gravamen of the offense.

absent approval by the Lands Division. This policy is implemented now.

Subject to these criteria, an attorney for the Government may enter into a plea agreement which involves the dismissal of other charges. Under Rule 11(e)(1)(A) and Guideline 6B1.2(a), the court may accept such an agreement provided the remaining charges "adequately reflect the seriousness of the actual offense behavior" and provided it determines that the "agreement will not undermine the statutory purposes of sentencing."

2. <u>Factual stipulations and admissions</u>. An attorney for the Government, in accepting a plea, is to insure that the necessary factual stipulations or admissions are obtained so a court will be able to impose a sentence in accord with the applicable guidelines for the offense that provides the highest guidelines range for the conduct charged, or a sentence above the guidelines if an aggravating factor warranting such sentence is present. The plea agreement should be as precise as possible as to what occurred and should endeavor to address the presence or absence of any potential specific or general offense characteristic including those set forth in Chapter 3, as well as Chapter 2, of the Guidelines.[5] A stipulation of facts should include a detailed and complete statement of adjustments which have been agreed upon and those where no agreement has been reached, including victim-related adjustments, adjustments for the defendant's role in the offense, adjustments for obstruction of justice, and adjustments for multiple counts. Characteristics which are known to be true and which are readily provable are not to be overlooked or denied. On the other hand, if a characteristic is believed to be true or is charged but cannot be readily proven (<u>e.g.</u>, the full amount of a loss), it need not be pursued. The reason for this decision should be noted on the record and/or in the case file. There are to be no stipulations or proffers as to misleading or non-existing facts, however. See generally, Guideline 6B1.4.

While it may be possible to stipulate that a particular offense level is controlling in a given case, it will rarely be possible to accurately stipulate to the appropriate criminal history category within that level, until the pre-sentence report has been received and the defendant's true criminal record ascertained. Plea agreements should not foreclose the determination of the proper category by the judge, or the imposition by the judge of the alternative career offenders

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[5] Prosecutors are reminded, however, of the statement in the Attorney General's memorandum to all United States Attorneys of July 16, 1986, which stated: "Assistant United States Attorneys should be careful not to make any statement in the course of a criminal investigation or prosecution that may bind the government in a related civil case (such as the amount of damages) without consultation with the civil attorney."

offense levels provided in Chapter 4, Part B, of the Guidelines where applicable.

While no mandatory policies are imposed in this regard, it is preferable that plea agreements be in writing, at least where felony offenses are charged in the indictment. Having these agreements in writing will facilitate mandatory Sentencing Commission monitoring of the plea and sentencing process, as well as avoiding misunderstandings as to the agreements reached in a particular case.

It is particularly important that pre-sentence reports be as complete and accurate as possible. Government prosecutors are to be as cooperative as legally permissible in providing information to probation officers and giving them access to materials in the case file. Where Rule 6(e) precludes access to certain information that would be relevant to the application of a Guidelines provision to the sentence determination, the government prosecutor should consider obtaining a court order permitting disclosure, or directing a probation officer's attention to an independent source for the information. Of course, if a disclosure would reveal the identity of a confidential informant, a situation-by-situation determination will have to be made as to whether to make any sort of disclosure.

3. <u>Permitted plea agreements</u>. Subject to the policies set forth herein and any further policies or restrictions set forth by you for your Division or Office, an attorney for the Government may enter into a plea agreement which includes the dismissal of any charges or an agreement not to pursue potential charges, or which includes a non-binding recommendation for:

a. A sentence at the lower end of the proper range as determined by the Guidelines for the offense after considering the adjustments available under Chapters 2, 3, and 4, or for a sentence of probation where permitted by the Guidelines;

b. A reduction of two levels below the otherwise applicable Guideline for "acceptance of responsibility" as provided by Guideline 3E1.1;

c. The extent, if any, of an applicable downwards departure from the Guidelines based on a factor set forth in Chapter 5, Part K1.1 or 2, of the Guidelines; and/or

d. The extent, if any, of an applic- able upwards departure from the

Guidelines based on a factor set forth in Chapter 5, Part K2, of the Guidelines. (Such departures should normally be sought where applicable, but discretion is retained in this area by statute for Judges in sentencing so it should also be retained for prosecutors in making recommendations.)

4. Exceptions: Supervisory approval. Approval of the United States Attorney or a designated supervisory level official,[6] may be granted to:

a. Recommend to a judge a departure from the Guidelines based on a factor other than one set forth in Chapter 5, Part K, of the Guidelines, after first consulting with the designated person in the concerned litigating division section;[7]

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[6] In a case which is prosecuted by a section in a litigating division, approval would be by the Section Chief. In addition, in any tax case, approval of the appropriate regional assistant chief of the Criminal Section of the Tax Division is required. Current approval requirements continue to apply in Lands, Civil Rights, and Antitrust Division cases.

[7] See Appendix A. Consultation with the applicable section in a litigating division is required for an interim period before upward departures are sought or before downward departures are agreed to when based on factors other than those explicitly covered by Chapter 5, Part K. The factors listed there are not exclusive but are recognized as the most common ones for use. Departures may occur for any other significant reason not adequately taken into consideration by the Commission in formulating Guidelines for a particular offense. 18 U.S.C. § 3553(b). If the plea agreement includes a Government recommendation for departure from the Guidelines based upon the existence of factors that were not addressed by the Commission in formulating the Guidelines for a particular offense, this information should also be developed in detailed stipulations of fact. Note the discussion in Chapter 5, Part H, of factors which are "not ordinarily relevant" to sentencing. Prosecutors should be guided accordingly.

This approval and consultation requirement includes the proposed use of the upwards departure permitted by Guideline 4A1.3 for situations where the normal criminal history category

(continued...)

b. Enter into the form of plea agreement that includes a specific sentence as authorized by Rule 11(e)(1)(C) and Guideline 6B1.2(c);[8/] and

c. Depart from the policies set forth in paragraph 1 as to pleas for any justifiable reason consistent with the statutory purposes of sentencing. The reasons for such departures should be reflected in writing in the case file and/or on the record.

5. Issues of Interpretation. As with most statutes, there will be issues of interpretation that are not resolved by the commentary or general provisions. Over-reaching or "aggressive interpretations" should not occur. In the event it is not clear that a specific fact or offense characteristic can be established, the issue should not be pressed simply to score a point. Nor should doubtful interpretations or applications of the Guidelines be pursued. Particular care should be exercised in reference to Chapter 3, Part D, on multiple charges. If there is any question as to the interpretation or applicability of a particular guideline to a case, the relevant section in the concerned litigating division should be consulted. (The designated contact points in the litigating divisions are set forth in Appendix A.)

6. Appeals. Government appeal of a sentence is authorized in four circumstances under 18 U.S.C. § 3742(b), and the statute requires that the Solicitor General must authorize not only the appeal itself but also the filing of the notice of appeal in all four categories of cases. Government appeal is authorized: (1) when the sentence was imposed in violation of law; (2) when the sentence was imposed as the result on an incorrect application of the Guidelines; (3) when any component of the sentence is unreasonably low and is lower than the sentence recommended in the applicable guideline unless the sentence is equal to or

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7/ (...continued)
computations do not adequately reflect the seriousness of a defendant's past criminal conduct or the likelihood he will commit new crimes. The general nature of this departure warrants supervisory review.

8/ This is different from an agreement which includes merely a non-binding recommendation or the dismissal of other charges - cf. Rule 11(e)(1)(A) and (B) and Guideline 6B1.1(a) and (b).

higher than an agreed sentence in a plea agreement under Fed. R. Crim. P. 11(e)(1)(B) or 11(e)(1)(C); or (4) when there is no guideline for the offense and the sentence is unreasonably low, unless the sentence is consistent with or higher than a sentence in a plea agreement pursuant to Fed. R. Crim. P. 11(e)(1)(B) or 11(e)(1)(C). Government appeal of a sentence is not authorized for a sentence within the correct sentencing guideline or for a sentence above the guidelines even if we think the sentence is too low.

To avoid the possibility that a court might rule that notice of appeal of a sentencing issue is invalid without prior approval by the Solicitor General, approval of filing of the notice should be obtained beforehand. Accordingly, if you wish to appeal an adverse sentencing decision, you should make your recommendation to the appropriate Appellate Section of a litigating division along with accompanying documentation, within seven days of imposition of sentence.[9/] That recommendation will be processed by the Appellate Section through the Solicitor General in the same manner as any other appeal recommendation, subject to the time constraints discussed above.

Unlike most other adverse decisions, in regular criminal cases not involving tax, environmental, wildlife, or civil rights counts, if you do not wish to appeal an adverse decision on a sentencing issue, you need not process a recommendation against appeal. However, to assure consistent implementation of the Sentencing Reform Act and the Guidelines, you should promptly notify the Appellate Section by telephone or in writing of any significant appealable adverse decision you do not wish to appeal and of any significant sentencing issue raised on appeal by a defendant that could pose a problem for the Department. In cases involving tax, environmental, wildlife, or civil rights counts, the designated person in the concerned litigating division is to be contacted immediately after any adverse sentencing decision.[10/]

The Department is likely to appeal certain categories of decisions: any wholesale attack on the legality or constitutionality of the Sentencing Commission or the Guidelines;

9/ In the case of a tax case, the recommendation would be processed through the appropriate regional assistant chief of the Criminal Section of the Tax Division.

10/ Contact Assistant Chief Robert Lindsay (FTS 633-3011) of the Criminal Section of the Tax Division in tax cases; Peter Steenland, Chief of the Lands Division Appellate Section (FTS 633-2748) in Lands Division cases; and either David Flynn, Chief of the Civil Rights Division Appellate Section (FTS 633-2195), or Linda Davis, Chief of the Civil Rights Division Criminal Section (FTS 633-3204), in civil rights cases.

any illegal sentence, including a refusal or failure by the sentencing judge to follow the Guidelines; and any clearly incorrect interpretation of the Guidelines. On the other hand, we will need to be cautious in appealing a sentence because it is below the Guidelines, limiting those appeals to cases in which we have a strong argument that the sentence is unreasonable.

Appeal recommendations in regular criminal cases should be made to the Criminal Division Appellate Section person who handles adverse decisions for the circuit in question. Other reports in regular criminal cases required by Part 6 of this Memorandum should be made to Karen Skrivseth of the Appellate Section, (202)(FTS) 633-3793, or the person in the Appellate Section who handles adverse decisions for the circuit. If you have questions regarding the advisability of appealing a sentencing decision, contact the person in the Criminal Division section having substantive jurisdiction over the offense of conviction if the issue relates to the guideline for the particular offense. Contact Karen Skrivseth or the Appellate Section person who handles adverse decisions for the circuit if the issue relates to appealability of sentences or a question regarding legality or constitutionality of the new sentencing system in general.

Conclusion

I commend to your attention the Prosecutors Handbook on Sentencing Guidelines which is being distributed by the Criminal Division. Your legal staff should become familiar with the contents of this Handbook as well as the contents of this Sentencing Advocacy and Case Settlement Policy. Chapter IV in the Handbook should be read in conjunction with this Policy.

November 1st marks the beginning of a new era in the federal criminal justice system. With your cooperation, patience, and wisdom we can help make these new Guidelines a success.

APPENDIX A: CONTACTS ON SENTENCING GUIDELINES

Below are the designated contact points in the various Department components on the Sentencing Guidelines. This list includes the designated persons to contact in the event that consultation (or approval) is required with a litigating division section for departures under this policy.

CRIMINAL DIVISION

Subject Area	Contact	FTS Telephone
Appeals (including: effective date)	Karen Skrivseth or the attorney assigned to your circuit	633-3793 see attached page A-3
Fraud	Robert Dehenzel Robert Clark	786-4600 786-4383
General Litigation (including: Federal crimes while on release, evasion of military service)	Victor Stone	786-4828
Internal Security	Ihor Kotlarchuk	786-4943
Narcotics	Catherine Volz Kevin Connolly Peter Djinis	786-4706 786-4700 786-4700
Obscenity	John DuBois Janis Kockritz	633-5780 633-5780
Organized Crime	Lester Joseph	633-1564
(Questions on relief from disability pertaining to labor unions and employee benefit plans)	Jerry Toner James Silverwood	633-3666 633-1567
Prisoner Transfer	William Manoogian Jody Ferrusi	786-3524 786-3524
Public Integrity	Lee Radek	786-5079
Criminal Fines	Franklin Shippen	786-4954
Additional Copies of Prosecutors Handbook	Office of Administration	786-4881

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

Subject Area	Contact	FTS Telephone
Training	Christopher Neuchterlein	633-4104
General Questions	Grace Mastalli Manny Rodriguez	633-3276 633-4024
ANTITRUST DIVISION	Judy Whalley	633-2562
CIVIL DIVISION	John Fleder	724-6786
CIVIL RIGHTS DIVISION	Daniel Bell	633-4071
Appeals	David Flynn Linda Davis	633-2195 633-3204
LAND AND NATURAL RESOURCES DIVISION	Judson Starr Raymond Mushall James Kilbourne	633-2490 633-2493 633-1811
Appeals	Peter Steenland	633-2748
TAX DIVISION	Robert E. Lindsay Assistant Chief Criminal Section	633-2914

REGIONAL ASSISTANT CHIEFS, CRIMINAL SECTION

Northern Region	George T. Kelley	633-3036
Southern Region	Patrick J. Sheedy	633-4334
Western Region	Ronald A. Cimino	633-5247

APPELLATE SECTION
ADVERSE DECISION CONTACTS

First Circuit	-	Ann Wallace (633-2842)
Second Circuit	-	Ann Wallace (633-2842)
Third Circuit	-	Sara Criscitelli (633-3741)
Fourth Circuit	-	Tom Booth (633-5201)
Fifth Circuit	-	Merv Hamburg (633-3746)
Sixth Circuit	-	Joe Wyderko (633-3608)
Seventh Circuit	-	Joel Gershowitz (633-3742)
Eighth Circuit	-	Robert Erickson (633-2841)
Ninth Circuit	-	Patty Stemler (633-2611) S.D. California, Arizona, Hawaii, Alaska, Oregon
		John DePue (633-3961) E.D. California, C.A. California, Nevada, Washington State
		Karen Skrivseth (633-3793) N.D. California Guam, Marianas, Idaho, Montana
Tenth Circuit	-	Mervyn Hamburg (633-3746)
Eleventh Circuit	-	Ann Wallace (633-2842)
	-	Deborah Watson (633-5524) S.D. Florida
D.C. Circuit	-	Ann Wallace (633-2842)